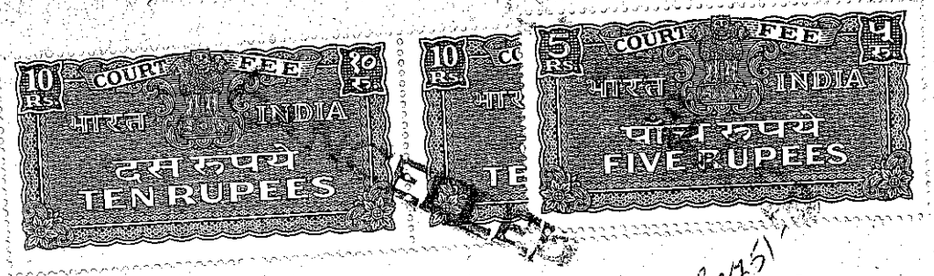

(4)

(2751) (3)

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR.

M.P.No._____/1992

Petitioner:-

1. Alok Jain, Proprietor, M/s Bastar Medical Stores, Jagdalpur Distt. Bastar (M.P.)

Attested 28/4/05 A.R. (5)

2. Laxmi Chand Jain, Proprietor, Bastar Medical Stores, Jagdalpur, Distt. Bastar (M.P.)

deleted as per Hon'ble Court's order dated 25.4.05 28.4.05

Versus

Respondents:-

1. Drug Inspector, Jagdalpur Distt. Bastar (M.P.)

2. State of M.P. Through Dy. Secretary, Public Health and Family Welfare Deptt. Bhopal.

PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA

HIGH COURT OF CHHATTISGARH, BILASPUR

Single Bench : Hon'ble Shri H.L. Dattu, CJ.

Writ Petition No. 3959 of 1992

Petitioner : Alok Jain, Proprietor, M/s Bastar Medical Stores, Jagdalpur Distt. Bastar (M.P.)

Vs.

Respondents

1. Drug Inspector, Jagdalpur Distt. Bastar (M.P.)
2. State of M.P. Through Dy.Secretary, Public Health and Family Welfare Deptt. Bhopal.

Petition under Articles 226 of the Constitution of India.

Present: Shri Prafull Bharat, counsel for the petitioner.
Shri A.S. Kachhawaha, G.A. for the respondents/State.

ORAL ORDER
(Passed on 24th April, 2007)

The petitioner is the proprietor of Bastar Medical Stores, Jagdalpur. In this writ petition filed under Articles 226/227 of the Constitution of India, the petitioner calls in question the correctness or otherwise of the order passed by the Drug Inspector/Licensing Authority dated 11.08.1992 and the orders passed by the First Appellate Authority dated 03.10.1992. By the impugned orders, the Licensing Authority has cancelled the licence granted to the petitioner under the provisions of the Drugs and Cosmetics Act, 1940 (for short 'the Act').

(2) The Drug Inspector/Licensing Authority had inspected the business premises of the petitioner on 03.07.1992. On inspection, he found that the petitioner had kept in store those medicines whose date of potency had expired. After inspection, the Drug Inspector/Licensing Authority had issued a show cause notice to the petitioner inter alia to show cause why the licence granted to the petitioner should not be cancelled by invoking its power under Section 66 of the Act for the alleged violation of provisions of

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Sub-rule (17) of Rule 65 of the Drugs and Cosmetics Rules, 1945 (for short 'the Rules'). The petitioner had filed his reply to the show cause notice.

(3) The Drug Inspector/Licensing Authority had also issued yet another show cause notice pursuant to the compliant lodged by a customer inter alia directing the petitioner to show cause why the petitioner's license should not be cancelled by invoking the power under Section 66 of the Act for violation of Sub-rule 4 (1) (e) of Rule 65 of the Rules.

(4) The petitioner had filed his reply to the show cause notice. After considering the reply of the petitioner, the Drug Inspector/Licensing Authority had passed an order dated 11-08-1992 cancelling the licence granted to the petitioner.

(5) Aggrieved by the aforesaid order, the petitioner had filed an appeal before the First Appellate Authority. By order dated 03-10-1992, the First Appellate Authority had confirmed the orders passed by the Drug Inspector/Licensing Authority. The correctness or otherwise of the said order is the subject matter of this writ petition.

(6) Shri Prafull Bharat, learned counsel for the petitioner would submit that on the date of inspection by the Drug Inspector/Licensing Authority, the petitioner had not kept the medicines whose potency expired, in the shelves/racks or on the refrigerator but had kept them below the refrigerator, therefore, the provisions of sub-Rule (17) of Rules 65 would not be attracted. The second submission canvassed by the learned counsel for the petitioner is that, it is the Drug Inspector who has passed the impugned order and therefore, the order so passed is by an incompetent person. Lastly, learned counsel for the petitioner would submit that the petitioner had not sold the drug which was classified under Schedule C and therefore, the Drug

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Inspector/Licensing Authority could not invoke the provisions of Rule 66 of the Rules to cancel the licence granted to the petitioner.

(7) Per contra, learned counsel appearing for the respondents has justified the impugned order.

8) To appreciate the contention canvassed by learned counsel for the petitioner, Sub-rule (17) of Rule 65 of the Rules requires to be noticed. Therefore, it is extracted and the same reads as under:

> "(17) No drug shall be sold or stocked by the licensee after the date of expiration of potency recorded on its container, label or wrapper, or in violation of any statement or direction recorded on such container, label or wrapper."

Proviso appended to the Rules would make it clear that the drugs in respect of which the licensee has taken steps with the manufacturer or his representative for the withdrawal, reimbursement etc. may be stocked after the date of expiration of potency pending such withdrawal, reimbursement or disposal as the case may be, subject to the condition that the same shall be stored separately from the trade stocks and all such drugs shall be kept in packages or cartons, the top of which shall display prominently, the words "Not for Sale".

(9) In the instant case, the petitioner submitted before this Court as well as before the Drug Inspector/Licensing Authority that the drugs' whose potency expired had not been kept on the shelves or racks for the purpose of sale but kept below the refrigerator and therefore, the Drug Inspector/Licensing Authority could not have observed in his report the drugs whose potency had expired were kept by the petitioner, for the purpose of sale.

(10) A reading of the Proviso to Sub-rule (17) of Rule 65 of the Rules would make it clear that if the potency of the drug has expired, there is an obligation on the licensee to take effective steps with the manufactures for withdrawal of such drugs and till such time he is expected to keep those drugs in packages or in cartons on which he shall prominently display "Drugs not meant for sale". In the instant case, the licensee had not taken these steps. Therefore, the Drug Inspector/Licensing Authority was justified in assuming that the licensee had kept the drugs in his stock for the purpose of sale and that is in contravention of the condition of the licence. Therefore, learned counsel for the petitioner may not be justified in contending that merely because the licensee had kept the drugs below the refrigerator, the same was not meant for sale. In view of this, the first contention urged by the learned counsel for the petitioner requires to be rejected.

(11) Shri Prafull Bharat, learned counsel for the petitioner would submit that the impugned order was passed by the Drug Inspector and not by the Licensing Authority . Therefore, the order is not passed by a competent person.

(12) In the present case, it is the Drug Inspector/Licensing Authority who had inspected the business premises of the licensee and it is only after finding that there was a violation of conditions of license , the Drug Inspector who was also the Licensing Authority had passed the impugned order. In that view of the matter, it cannot be said that the order was passed by an incompetent authority.

(13) Shri Prafull Bharat, learned counsel for the petitioner also states that under Sub-rule 4(1)(e) of Rule 65, it is only in the case of drug specified in Schedule C, the retailer is expected to mention the name of the

manufacturer, batch number and the date of expiry of potency when the effective sale of the drugs was made and issued the bill to the customer.

(14) In the instant case, it was the specific case of the respondent-authority based on the complaint of the customer that the drug specified under Schedule C was sold by the petitioner, and he had failed to mention the name of the manufacturer, batch number and the date of expiry of potency. Mentioning the above omissions, show cause notice had been issued by the Drug Inspector/Licensing Authority, but in the reply to the show cause notice, the petitioner had not stated that he had not sold any drugs specified in Schedule C. If for any reason, such objection had been taken by the petitioner, the Licensing Authority would have answered the same while considering the reply of the petitioner. That only means that the petitioner had sold the drugs specified under Schedule C to the customer, but failed to mention in the bill the name of the manufacturer, batch number and the date of expiry of potency. Therefore, it cannot be said that the Drug Inspector/Licensing Authority had committed any error while passing the impugned order.

(15) Taking into consideration the seriousness of the offences committed by the petitioner, in my opinion, the Drug Inspector was wholly justified in canceling the licence issued to the petitioner. The order so made by the Drug Inspector/Licensing Authority, was confirmed by the First Appellate Authority after considering all the grounds raised by the petitioner in appeal memo so filed.

(16) In that view of the matter, in my opinion, the other contention canvassed by the learned counsel for the petitioner has no merit. In view of this, the relief sought for by the petitioner cannot be granted. Accordingly, the

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writ petition is rejected. The parties shall bear their respective costs. Ordered accordingly.

Sd/-
Chief Justice